IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10659 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAMTOSH SANKHARAM PATEL

Versus

STATE OF GUJARAT

Appearance:

MR DARSHAN V SHAH for Petitioner

MR UDARI R BHATT, AGP Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/12/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Ahmedabad City on 1st of August, 2000 in exercise of powers conferred

upon him under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short). The petitioner came to be detained on 2nd August, 2000 in pursuance of the above said order.

2. In the grounds of detention, the detaining authority has relied upon two crimes registered against the petitioner before Navrangpura and Shahibaug Police Stations under Sections 379, 399, 400, 401, 402,120B and 114 IPC and under Section 25(1)(b)(a) of the Arms Act. The offences came to be registered on 25th of June and 7th of July, 2000 respectively. The detaining authority relied upon the investigation carried on in the above said two crimes registered against the petitioner and came to the conclusion that the petitioner was of a criminal mind and was possessing lethal weapons. The detaining authority came to the conclusion that the petitioner was indulged in anti social activity so as to be obstruction of public order. The detaining authority also concluded that the petitioner was indulging in thefts of the vehicles and was involved in house breaking offences. The detaining authority also considered the statements of the witnesses who on assurance of anonymity offered their statements before the concerned authority. The statements denote that on suspicion that witnesses were providing information to the Police against the petitioner, the petitioner had beaten the witnesses and the public order was disrupted. From the above material, the detaining authority reached to the subjective satisfaction that the petitioner was a "dangerous person" within the meaning of Sec. 2(c) of the PASA Act. The detaining authority therefore, as a last resort, passed the order of detention against the petitioner.

3. Learned Advocate Mr.D.D. Shah with learned Advocate Mr. S.J. Shukla for petitioner and learned Advocate Mr. Udai Bhatt for the respondents were heard.

4. Various grounds urged to challenge the detention of the petitioner. It was vehemently urged that the order in question is vitiated by non-application of mind on the part of detaining authority qua facts of the case and the situation. It is urged that the detaining authority wrongly considered the provisions of Section 437(5) of the Cr.P.C.

5. Having regard to the rival contentions and scrutinising the record, it clearly emerges that the petitioner after arrested, preferred a bail application in Shahibaug Police Station Crime Register No. 258 of

2000 before the Addl.Sessions Judge, Ahmedabad (Rural) at Mirzapur. This is the crime registered against the petitioner and has been relied upon by the detaining authority. The above said Bail Application No. 508 of 2000 was opposed on behalf of the State. Ultimately, the learned Addl. Sessions Judge, Ahmedabad (Rural) vide his order dated 19th July, 2000, rejected the bail of the petitioner. Learned Advocate for the petitioner makes a statement that thereafter no other bail application is preferred by the petitioner and the petitioner is in judicial custody in the above said offences from the date of his arrest. The order of detention came to be passed on 1st of August, 2000. The detaining authority was aware that the detenu petitioner was in judicial custody and his bail application was rejected on 19th July, 2000 by the competent court. With this factual aspect, the detaining authority in the grounds observed that the detenu petitioner was likely to be released on bail and was likely to continue his illegal activities. Since the petitioner was in judicial custody and his bail application was rejected, the fact of consideration of cancellation of bail was out of question. Even then, the detaining authority in the grounds observed that the cancellation of bail proceeding was likely to consume time and therefore the same was not resorted to. This glaring non-application of mind on the part of the detaining authority is not only qua legal position but qua facts of the case also. The petitioner was in judicial custody and his bail was rejected, he was not capable of continuing his illegal activities. The detaining authority had opportunity to oppose the bail, if filed by the petitioner. The detaining authority failed to consider this factual aspect of the matter and, therefore, the order of detention is vitiated by non-applciation of mind and the same is required to be quashed and set aside.

6. In view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Ahmedabad City, on 1st August, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Santosh Sankharam Patel, is ordered to be set at liberty forthwith, if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair